

TEACHERS' RETIREMENT BOARD

REGULAR MEETING

SUBJECT: Election of the Teachers' Retirement Board
Public Hearing on Proposed Regulation

ITEM NUMBER: 11a

ATTACHMENT(S): 2

ACTION: X

MEETING DATE: March 6, 2003

INFORMATION: _____

PRESENTER: Ed Derman

INTRODUCTION

Chapter 1049, Statutes of 2002 (SB 1580—Burton) requires the Teachers' Retirement Board (Board) to adopt regulation governing the conduct of elections for the three members of the Board currently appointed by the Governor to represent active members and participants of California State Teachers' Retirement System (CalSTRS).

Specifically, the bill requires the regulation to provide that the elections be conducted in the most cost-effective manner possible. In addition, it provides the Board some latitude in adopting these regulation by exempting the regulation from the adoption process required in the Administrative Procedures Act, including the requirement that the proposed regulation be submitted to the Office of Administrative Law for legal review. However, consistent with the Board's direction to staff at its December Regular Meeting, the System has provided a meaningful period of public comment and participation in its rulemaking process.

During early January, CalSTRS staff solicited comments on a pre-release draft of the Proposed Regulation from the Board and various employee organizations representing active members and participants of the System. As a result, staff made limited, mostly technical changes to the Proposed Regulation, which is attached. The Proposed Regulation and the Notice of Proposed Rulemaking were first made available to the public on January 22, 2003, when they were posted on the CalSTRS Web site. The Notice and Proposed Regulation were later distributed via mail to interested parties who normally receive copies of the Board's Regular Meeting and Committee Meeting agendas. On January 31, 2003, the Notice of Proposed Rulemaking was published in the California Regulatory Notice Register, which is widely distributed throughout California. The attached Notice requires written comments on the Proposed Regulation to be submitted to the System by February 21, 2003 in order to be considered by the Board at its March Regular Meeting.

Because the end of the written comment period extends beyond the date the March Regular Meeting agendas are prepared, any changes to the Proposed Regulation made by CalSTRS staff in response to the written public comments, as well as the comments themselves and CalSTRS' response, will be submitted to the Board and made available to interested parties prior to the Board meeting.

Features of the proposed regulation include:

Election Notice – The Chief Executive Officer (CEO) selects an Election Coordinator to conduct the election and determine the method of balloting. The Board approves, and the Election Coordinator distributes a Notice of Election announcing qualifications for holding office and voting, deadlines, and nominating procedures, including the required number of valid petition signatures.

Signature Gathering – Members and participants may request a Candidate Nomination Packet containing a copy of the regulation governing Board Elections, a petition form, and a nomination certification form. Petition signatures must be accompanied by the person's printed name, year of birth and last four digits of their Social Security Number.

Certifying Candidates – The Election Coordinator verifies candidates' forms and certifies qualified candidates for the ballot. In situations where only one qualified candidate is certified, that person is declared the winner. In situations where no qualified candidate is certified, the Election Coordinator extends the nomination period for an additional 21 days.

Ballot Statements – Candidates will file a structured candidate statement listing the candidate's name, job title, employer, years of service under either CalSTRS benefit program, up to five previous jobs, up to five organization memberships, up to ten endorsements, and answers totaling no more than 150 words to three questions regarding their potential service as members of the Board. Candidates' statements are reviewed and may be edited by the Election Coordinator and their positions on the ballot are determined by lot. Any portion of a candidate statement the Election Coordinator is unable to verify for accuracy will not be included in the election materials distributed to eligible voters.

Ballot Distribution and Counting – Candidate Statements and Ballots will be distributed by mail to eligible members and participants having an address on file with the System. Ballots will be available upon request to those not receiving a ballot. Ballots will be returned to the System without cost to the voter and valid ballots, as specified, will be counted by an independent, neutral agent. The candidate receiving the highest number of votes is declared the winner (a plurality), or be determined by lot in the case of a tied vote. The regulation also permit CalSTRS to conduct the election via telephone and Internet voting.

Election Recount and Protest – A losing candidate may request a recount, within 10 working days of the CEO's certification of the election if the difference in votes is less than 3 percent of the total votes cast. A candidate may also protest an election within 10 working days of the CEO's certification of an election. The protest is decided either by a committee of at least three disinterested members of the Board, or, if the Board so chooses, a protest panel of 3 arbitrators according to State law and the Labor Arbitration Rules of the American Arbitration Association.

Filling Vacancies – The Board holds special elections to fill vacancies by distributing a Notice of Election within 90 days of the vacancy and conducting the election within 180 days of distributing the Notice of Election.

PROPOSED REGULATION

CALIFORNIA CODE OF REGULATION TITLE 5. EDUCATION DIVISION 3. TEACHERS' RETIREMENT SYSTEM

ARTICLE 13. ELECTION OF MEMBERS TO THE TEACHERS' RETIREMENT BOARD

§ 24000. Board Member Elections.

Teachers' Retirement Board (Board) member elections shall be conducted by the Election Coordinator designated by the Chief Executive Officer in accordance with this Article.

The Election Coordinator shall conduct the elections in the most cost-effective manner feasible.

NOTE: Authority cited: Section 22200.5, Education Code.

Reference: Sections 22200 and 22200.5, Education Code.

§ 24001. Notice of Election.

The Election Coordinator shall distribute a Notice of Election adopted by the Board in advance of each election containing candidate nomination and election guidelines, eligibility criteria for candidates and voters, how to obtain candidate nomination packets from the System, and the schedule of events.

NOTE: Authority cited: Section 22200.5, Education Code.

Reference: Sections 22200 and 22200.5, Education Code.

§ 24002. Nomination of Candidates.

The Election Coordinator shall distribute candidate nomination packets containing a copy of the Notice of Election, petition form, nomination certification form, and copies of the rules and regulation governing the conduct of Board member elections, to members and participants who request a packet.

Members and participants shall qualify for nomination if they meet the eligibility criteria specified in the Notice of Election. Nomination shall be on the petition form provided by the System, signed by members and participants who would otherwise be eligible to vote in the election being conducted had the election occurred at the time they signed the petition. Members

and participants may sign more than one petition form. The minimum number of petition signatures required shall be determined by the Board and specified in the Notice of Election.

The candidate shall indicate on the petition form the specific Board member position for which he or she seeks election. An individual candidate may not be a candidate for more than one Board member position during any particular election.

The petition form shall include the signature and legible printed name of each member or participant signing the petition, year of birth, and the last 4 digits of his or her Social Security Number. Any signature not accompanied by all of the required information shall be invalidated.

Each candidate shall certify on the nomination certification form provided by the System that he or she accepts the nomination, consents to serve if elected, agrees to comply with the rules and regulation governing the conduct of Board member elections, and abide by a drawing of lots by the Election Coordinator in case of a tied vote.

Only those nomination forms and petition forms received in the headquarters office of the System by the deadline specified in the Notice of Election shall be accepted. The candidate must submit the nomination form and petition form containing at least the minimum required number of valid signatures in one packet at one time. Completed petition forms and nomination certification forms transmitted via facsimile to the headquarters office of the System by the date specified in the Notice of Election shall be deemed invalid if the original completed forms are not received in the headquarters office of the System within seven calendar days of their transmittal via facsimile.

The Election Coordinator shall verify the identity and eligibility of individuals who sign candidates' petition forms and certify qualified candidates for the Board member election.

The position of candidate names and statements in election materials distributed by the System to eligible voters shall be chosen by lot conducted by the Election Coordinator at the time he or she certifies valid nominating petitions.

The Election Coordinator shall notify qualified candidates of their certification, and the position of their names and statements in election materials distributed by the System. All deadlines and instructions related to the drafting of candidate statements shall be distributed to all qualified candidates in the notification letter. Upon distributing notification letters to qualified candidates, the Election Coordinator shall make public the names of the qualified candidates for the Board member election.

Where only one candidate has been nominated, the Election Coordinator shall, upon verification of the signatures presented in the nominating petition and upon the candidate's certification of his or her nomination acceptance, cancel the remaining election procedures and designate the single candidate to be certified by the Chief Executive Officer as elected.

If no candidate has been nominated in an election, or if no candidate has presented a valid petition form and nomination certification form for an election as required above, the Election

Coordinator shall extend the nomination period for an additional 21 calendar days and publicize his or her action to active members and participants and other interested parties.

NOTE: Authority cited: Section 22200.5, Education Code.

Reference: Section 22200, Education Code.

§ 24003. Candidate Statements.

a) As part of a candidate statement, each candidate shall provide the following information in the format specified by the Election Coordinator:

1) Name

2) Job Title

3) Employer

4) Status as either an active member of the Defined Benefit Program or a participant of the Cash Balance Benefit Program and years of service as a member or participant

5) A list of no more than 5 previous positions held

6) A list of no more than 5 organizations to which the candidate belongs and positions held in those organizations

(b) As part of a candidate statement, a candidate may provide a list of no more than 10 endorsements by individuals or entities.

(c) As part of a candidate statement, a candidate may provide answers to the following questions which shall, in total, consist of no more than 150 words:

1) What do you think should be the primary role of a member of the Teachers' Retirement Board?

2) How do you think you could contribute to CalSTRS as a member of the Teachers' Retirement Board?

3) What education and training do you possess that has prepared you to serve as a member of the Teachers' Retirement Board?

A candidate's answers to the questions above indicating his or her opinion or positions on issues of general concern to the System's membership may be included, so long as they are clearly stated as the candidate's opinion or view. The answers must be truthful, and must not include any remarks or questions that are inherently misleading, including rhetorical remarks and questions

that are inherently misleading. Answers may not refer to individual members of the Board or other candidates for election to the Board by name or inference.

Any portion of a candidate's answers to the questions above which, in total, exceeds 150 words will not be distributed.

(d) The candidate statement shall be filed with the Election Coordinator by the deadline indicated in the notification letter sent to qualified candidates. Once filed, statements may not be changed or withdrawn except by the Election Coordinator. Any candidate statement received after the deadline will not be distributed. The Election Coordinator shall reject or edit any statement which he or she determines contains obscene, vulgar, profane, scandalous, untrue, libelous or defamatory matter or which does not meet the statement limitations stated above. The Election Coordinator may request the candidate to verify the truthfulness of any factual statements. The candidate shall provide timely verification upon such request as specified in the notification letter sent to qualified candidates. The Election Coordinator shall remove any portion of the candidate's statement a candidate is unable to verify. All decisions by the Election Coordinator related to candidate statements are final.

Nothing in this section shall be deemed to make candidate statements or the authors thereof free or exempt from any civil or criminal action or penalty because of any false, slanderous or libelous statements offered for printing or distributed to voters. Information contained in the statement is the responsibility of the candidate and the System shall not be held responsible for the validity of any candidate statement or the contents thereof.

Following the review of candidate statements by the Election Coordinator, he or she shall distribute all candidate statements to each candidate in the respective contest.

NOTE: Authority cited: Section 22200.5, Education Code.
Reference: Section 22200, Education Code.

§ 24004. Ballot Distribution.

The Election Coordinator shall cause ballots and candidate statements to be distributed in advance of each election to each eligible active member and participant for whom the System has a valid mailing address recorded. The Election Coordinator shall provide a means for eligible active members and participants for whom the System does not have a valid mailing address recorded to request ballots and candidate statements. The Election Coordinator shall provide for the return of the voted ballots to the Board without cost to the eligible active member or participant. For purposes of this Article, "eligible active member" or "eligible active participant" means a member of the Defined Benefit Program or a participant of the Cash Balance Benefit Program, respectively, who is employed, on the date specified in the Notice of Election's criteria for voter eligibility, by an employer.

NOTE: Authority cited: Section 22200.5, Education Code.
Reference: Section 22200, Education Code.

§ 24005. Ballot Counting.

The Election Coordinator shall create reasonable procedures to ensure ballots are secured and canvassed in a manner consistent with commonly accepted election practices.

Valid ballots shall be canvassed publicly by an independent, neutral agent appointed by the System for that purpose on the date specified in the Notice of Election at the location designated by the System.

Depending upon the method of balloting selected by the Election Coordinator, the following are declared to be invalid ballots and shall not be counted in the election:

- a. Votes cast for individuals not listed as candidates on the official ballot.
- b. Ballots submitted by a person who is not an eligible voter.
- c. If more than one ballot is received from the same voter.
- d. If the same candidate is voted for more than once by the same voter.
- e. Votes cast in excess of that allowed on the ballot.
- f. Ballots not received within the time period prescribed by the Notice of Election.
- g. If a paper ballot is not forwarded through the United States Postal Service in the valid pre-addressed and stamped return envelope that is furnished.
- h. If a paper ballot is not signed by the eligible voter.
- i. Electronic ballots not cast in the manner prescribed by the System.

The candidate receiving the highest number of votes, or the winning lot as drawn by the Election Coordinator in case of a tie vote, or the single candidate, shall be certified by the Chief Executive Officer as having been elected.

NOTE: Authority cited: Section 22200.5, Education Code.
Reference: Section 22200, Education Code.

§ 24006. Notice of Election Results.

(a) Within three working days after the public ballot canvassing, or after verification of the nominating signatures pursuant to Section 24002 where the Election Coordinator certifies only one qualified candidate in an election for a position on the Board, the Election Coordinator shall transmit the election results to the Chief Executive Officer for his or her certification.

(b) Following certification by the Chief Executive Officer, the Election Coordinator shall notify candidates, Board members and other interested parties of the certified results. Notification to the newly elected Board member shall include an Oath of Office form. This form is to be signed by

the Board member-elect in the presence of a notary public and returned to the System. The Election Coordinator shall file the Oath with the Secretary of State.

(c) Upon the Chief Executive Officer's certification and proper execution of the Oath of Office form, the Board member elected through this process shall take his or her office on either the day provided for by statute or immediately, if elected to fill a vacancy.

NOTE: Authority cited: Section 22200.5, Education Code.
Reference: Section 22200, Education Code.

§ 24007. Recount of an Election.

(a) A candidate in the affected Board member election may file a written request with the Election Coordinator at the headquarters office of the System for recount within ten working days following the distribution of the certified election results; otherwise, there shall be no opportunity for requesting a recount and the certified election results stand as the final results.

(b) A request for a recount shall not delay the seating of an elected Board member. Such elected Board member shall take office on either the day provided for by statute or immediately, if elected to fill a vacancy, subject to the potential termination of such Board membership as a result of the recount.

(c) A candidate in the affected Board member election may request a recount of the valid ballots only if the difference in the number of votes cast between the candidate requesting the recount and the unofficial winner is less than 3 percent of the total number of valid ballots cast. A written request for a recount shall specify the election to be recounted, shall be signed by the candidate requesting the recount, and may specify any other relevant material to be examined.

(d) The Election Coordinator shall set a date for the recount upon receipt of the written request, and shall confirm this date upon receipt of the estimated cost to conduct the recount. The estimated cost of conducting a recount will include the System's administrative cost and the costs of the independent, neutral agent appointed by the System to canvass the valid ballots. Legal tender of the amount of the estimated cost of conducting the recount shall be submitted by the candidate requesting the recount to the Election Coordinator within three working days following notification of the estimated cost to conduct the recount; otherwise, the recount shall be terminated.

(e) If the results of the recount do not change the ranking of the candidates then the certified results shall stand as the final election results. In this case, if the actual cost of the recount is less than the estimated cost deposited by the requester, the System shall refund the amount which exceeds the actual cost; if the actual cost of the recount is more than the estimated cost, the System shall invoice the requester for the difference.

(f) If the results of the recount do change the ranking of the candidates, then the recount results shall be certified by the Chief Executive Officer and shall stand as the final election results. In this case, the System shall refund the amount of the estimated cost deposited by the requester.

NOTE: Authority cited: Section 22200.5, Education Code.
Reference: Section 22200, Education Code.

§ 24008. Protest of an Election.

A candidate in the affected Board member election may protest an election by filing a written protest with the Election Coordinator at the headquarters office of the System within ten working days following the mailing of the certified election results for an election or a recount, otherwise, there shall be no opportunity for filing a protest and the certified election results shall stand as the final election results. The written protest shall be identified using the word “protest”, shall specify the election, and shall state the grounds of the protest and suggested remedy.

Upon receipt of a valid and timely protest, the Election Coordinator shall mail a copy of the request to all candidates in the election and notify the Board and other interested parties that a protest has been filed.

An ad-hoc committee of the Board consisting of an odd number of members no fewer than three shall determine, what remedy, if any, shall be granted to the candidate filing the protest. No Board member who is a candidate in the election under protest, or has endorsed a candidate in the election under protest may become a member of the committee or participate in its selection.

The Board chairperson shall appoint Board members to the committee. If the Board chairperson is a candidate or has endorsed a candidate in the election under protest, the Board vice chairperson shall appoint Board members to the committee. If the Board vice chairperson is a candidate or has endorsed a candidate in the election under protest, the Board shall appoint from its number, members to the committee at its next regularly scheduled meeting.

If a minimum of three Board members are not eligible to participate on the ad-hoc committee, or if a majority of the full Board, excluding candidates but including endorsers of candidates so directs, the protest shall instead be determined by a panel of three arbitrators in accordance with the provisions below, the laws of the State of California, and the Labor Arbitration rules of the American Arbitration Association (AAA) in effect at the time, to the extent the AAA rules are not in conflict with these regulation. One member of the panel shall be selected by the protesting candidate, one member of the panel shall be selected by the successful candidate, and the third member, who shall serve as chair, shall be selected by the first two panel members.

The committee may consider written and/or oral arguments submitted by the candidate filing the protest and any other interested party, in making its determination. Any oral proceedings by the committee shall be held in the Board’s meeting room and be open to the public. Other procedures, including those for receiving and considering arguments and factual allegations, shall be determined by the committee or arbitration panel in its sole discretion.

The determination of the committee or arbitration panel shall be rendered within 30 days of its appointment and shall be final and binding on the System and candidates for office. The committee or arbitration panel shall declare the election under protest void, and the position vacant, only upon a finding that Board-adopted election procedures were not substantially followed and that, without this lack of substantial compliance, the election outcome would likely have been different.

The filing of a protest shall not delay the seating of an elected Board member. Such elected Board member shall take office on either the day provided for by statute or immediately, if elected to fill a vacancy, subject to the potential termination of such Board membership as a result of the protest. Any newly elected member, as the result of a protest, shall hold office for a period equal to the remainder of the term of the vacated office.

NOTE: Authority cited: Section 22200.5, Education Code.

Reference: Section 22200, Education Code.

§ 24009. Elections for Vacant Elected Seats.

The Board shall provide public notice that an elected seat on the Board has been vacated at or before its next regularly scheduled meeting.

The Board shall hold special elections to fill vacancies that occur during the term of the elected members of the Board by distributing a Notice of Election for a vacated seat within 90 days of the vacancy. An election shall be held within 180 days of the distribution of the Notice of Election.

NOTE: Authority cited: Section 22200.5, Education Code.

Reference: Sections 22200 and 22200.5, Education Code.

TITLE 5. TEACHERS' RETIREMENT SYSTEM

NOTICE IS HEREBY GIVEN that the Teachers' Retirement Board (herein after referred to as "Board"), pursuant to the authority vested in it by Section 22200.5 of the Education Code, proposes to take the action described in the Informative Digest.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Section 22200.5 of the Education Code, and to implement, interpret or make specific Sections 22200 and 22200.5 of the Education Code, the Teachers' Retirement Board is considering adding a new Article 13, and Sections 24000 through 24009 to Division 3 of Title 5 of the California Code of Regulations as follows:

INFORMATIVE DIGEST

Existing law, Section 22200 of the Education Code specifies the composition of the Board which administers the State Teachers' Retirement Plan and the California State Teachers' Retirement System (herein after referred to as "System"). Chapter 1049, Statutes of 2002 (SB 1580 – Burton), among other things, requires the three members of the Board who currently are appointed by the Governor to represent active members and participants of System to be elected by the active members and participants. The changes made to the composition of the Board take effect on January 1, 2004. The chaptered legislation also requires the Board to adopt the regulation governing the conduct of elections and hold special elections to fill vacancies that occur during the term of the elected Board members.

The proposed regulation establish the rules governing the System's conduct of the election of members to the Board.

ADOPTION

Any interested person may present written comments regarding the proposed action to the person designated in this Notice as the contact person on or before 5:00 p.m. February 21, 2003. The System may present modifications to the proposed regulation to the Board for its consideration and adoption based on the written comments received.

The Board, as part of its Regular Meeting open to the public scheduled for Thursday, March 6, 2003, will discuss the proposed regulation, consider written comments received by the System by the deadline listed above, along with modifications suggested by the System, and consider any oral comments made during the time allotted for Opportunity for Statements From the Public.

Immediately following the discussion and considering all timely and relevant comments received, the Board may adopt the proposed regulation as described in this Notice, or with modifications. If the Board makes modifications to the proposed text, copies of the modified text (with changes clearly indicated) may be obtained by contacting the person designated in this Notice as the contact person.

TEXT OF PROPOSAL

Materials regarding this proposal, including the text of the proposed regulation and text of proposed modifications, can be accessed through the System's Web site at <http://www/calstrs.ca.gov> or be obtained by contacting the person designated in this Notice as the contact person.

CONTACT

Copies of the proposed regulation and inquiries or written comments concerning the substance of the proposed regulation should be made to:

Scot Blackledge, Legislative Coordinator
Legislative Services Office MS-14
California State Teachers' Retirement System,
P.O. Box 15275
Sacramento, CA 95851-0275
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The backup contact person is:

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